uHON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.855 of 2007

Between:

The Bhagyanagar Cooperative Urban Bank
Limited (Under Liquidation), JN Road,
Abids, Hyderabad rep by its Official Liquidator.

… Appellant

And

M/s.Bhuvaneshwari Investments (P) Limited
Incorporated under the Companies Act, 1956
Represented by its Director S.Ashok Kumar and another.

… Respondents

::JUDGMENT::

Counsel for the appellant : Shri D.Govardhana Chary

Counsel for the respondent No.1 : Smt.Padma Sharanappa for
Sri B.Nalin Kumar

October 11, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 4.12.2006

passed by the learned Single Judge in Writ Petition No.13392 of 2001 whereby, he quashed what was perceived as order dated 15.6.2001 made by Deputy Registrar of Cooperative Societies and Officer on Special Duty, Hyderabad (respondent No.2) under Section 71 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act').

We have heard Sri D.Goverdhana Chary, learned counsel for the appellant and Ms.Padma Sharanappa, learned counsel for respondent No.1 and scrutinized the record.

A perusal of the record shows that in the writ petition filed by it, respondent No.1 herein prayed for quashing the proceedings initiated by respondent No.2 under Section 71 of the Act and to restrain said respondent from taking action in furtherance of notice dated 15.6.2001.

In the counter filed by respondent No. 2, an objection was taken to the maintainability of the writ petition against the show cause notice and it was averred that after giving opportunity of hearing to the petitioner, certificate dated 26.6.2001 was issued under Section 71 of the Act for payment of Rs.57,99,928.25 ps.

The learned Single Judge did not take cognizance of the fact that after serving notice on the petitioner, which was subject matter of challenge in the writ petition, the competent authority issued certificate dated 26.6.2001 and allowed the writ petition by presuming that the concerned authority had passed order without giving notice to the writ petitioner.

In our opinion, the impugned order is liable to be quashed because it is founded on a fundamentally erroneous assumption that the competent authority had passed final order without giving notice and opportunity of hearing to the writ petitioner. The material

available on record shows that certificate dated 26.6.2001 was issued by respondent No.2 after giving notice and opportunity to the petitioner (respondent No.1) to represent its cause. Another patent error committed by the learned Single Judge is that he quashed notice dated 15.6.2001 by assuming it to be an order issued by respondent No.2, though as a matter of fact it was only show cause notice.

For the reasons stated above, the appeal is allowed. The order of the learned Single Judge is set aside and Writ Petition No.13392 of 2001 is dismissed. However, liberty is given to respondent No.1 to challenge certificate dated 26.6.2001 by filing an appeal under Section 76 of the Act. We also direct that if the appeal is preferred by respondent No.1 within a period of two weeks from today, the same shall be considered and decided on merits.

G.S. SINGHVI, CJ

Dt.11.10.2007

C.V. NAGARJUNA REDDY, J

msv